



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to joint applications filed by the landlord and the tenants. The landlord seeks:

1. A monetary Order;
2. An Order to retain the security deposit; and
3. An Order to recover the filing fee paid for this application.

The landlord is seeking \$1,165.00 plus the filing fee.

The tenants seek:

1. A monetary Order;
2. An Order to recover the security deposit; and
3. An Order to recover the filing fee paid for this application.

The tenants are seeking \$5,000.00 plus the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has either party met the burden of proving their claims?

Background and Evidence

This tenancy began on March 27, 2011 and ended on April 1, 2012. Rent was payable on the first of each month and was fixed at \$925.00 and the tenants paid a security deposit of \$462.50, a pet deposit of \$200.00 and a \$12.00 laundry cart deposit.

The landlord testified that the tenants gave notice on March 19, 2012 of their intention to vacate on April 1, 2012. The landlord testified that he warned the tenants that there notice was not sufficient but they vacated in any event without paying rent for April. The landlords are therefore seeking \$925.00 in rent for the notice period.

The landlords are also seeking recovery of \$240.00 in move-out charges.

The tenants agree to the move-out charges of \$240.00 however they do not agree that the landlord should keep their security or pet deposits.

Further, while the tenants agree that they gave notice on March 19, 2012 of their intention to vacate on April 1, 2012 they do not agree that they should pay rent for April. The tenants say they were forced to vacate. The tenants say this was so because they were without electricity, heat and hot water for most of their tenancy. The tenants say that at one point they had to move to a hotel at a cost of \$179.00 per night for 2 nights in July 2011 in order to shower. The tenants say evidence of the living conditions are documented in the numerous emails and notices from the landlord which are submitted in evidence. The tenants say they sought compensation from the landlord but they were unable to work out compensation although the landlord did state in an email that the tenants should submit receipts for their hotel stay "...so that we can reimburse you accordingly...". The tenants seek \$5,000.00 in the Application for Dispute Resolution calculated as follows: \$401.82 for hotel costs (2 nights at \$200.91 including HST); \$300.00 for each month of this tenancy for loss of heat, hot water and electricity (April 2011 to April 2012 – 12 months x \$300.00 = \$3,600.00); recovery of the \$925.00 security deposit and recovery of the filing fee paid for this application of \$50.00 which sums total \$4,976.82.

The landlord agrees that there were problems with the heating system boilers in July and new boilers had to be ordered from the US and this took some time. However the boilers still operated to some extent and all tenants were offered space heaters to supply additional heat as well as being offered reimbursement for any additional electricity charges using space heaters might incur. Further a pipe burst in July and there was no hot water for a few days. In total, in April, while the boiler was being repaired there were interruptions with hot water and heat for 3 days during which period the boiler was shut down for 3 to 4 hours at a time while welding took place. The landlord says they only received on work order to heat/hot water issues from these tenants and the issues was taken care of immediately.

Analysis

With respect to the landlord's claims the tenants agreed to the \$240.00 in moving charges.

With respect to the landlord's claim for the notice period, the Act requires tenants to give 30 day's written notice prior to vacating a rental unit. In this case the evidence is that the tenants gave their notice on March 19, 2012 and moved out on April 1, 2012. Section 45 of the Act says tenants may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, in this case having given their notice March 19, 2012, the earliest time the tenants could legally end the tenancy would have been April 30, 2012. I therefore find that the landlord is entitled to rent for the notice period (April) in the sum of \$925.00.

With respect to the tenants claims the testimony of the tenant and the landlord conflicts. The tenant says she was without heat, electricity and hot water for most of this tenancy, the landlord says it was a few days. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I therefore dismiss the tenants' claims for compensation save for their claim for recovery of hotel costs. I will allow this claim because the tenant has supplied evidence that the landlord agreed to reimburse the tenants for their 2 night hotel costs. I will allow this claim in the sum of \$401.82.

As the landlord has been successful in their claim I will allow them to recover the filing fee.

Calculation of monetary award in favour of landlord:

Notice period rent and move-out charges	\$1,165.00
Filing Fee	50.00
Total Award in favour of landlord	\$1,215.00
Less Award made to tenants	-401.82
Less Security Deposit, Pet Deposit& Laundry Cart Deposit held by landlord	-674.50
Balance due from tenants to landlord	\$138.68

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 07, 2012.

Residential Tenancy Branch